IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6278 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SHIVAM CHARITABLE TRUST

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 6278 of 2001

MS MAMTA R VYAS for Petitioner No. 1

MS MANISHA LAVKUMAR, Ld. AGP for Respondent No. 1

MR AD OZA for Respondent No. 2

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CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 19/09/2002

ORAL JUDGEMENT

1. Rule. Ms.Manisha Lavkumar, learned AGP waives

service of notice of rule on behalf of respondent No.1 and Mr.H.Raval appearing for Mr.A.D.Oza appears for respondent No.2 waives service of notice of rule.

2. With the consent of the parties, the matter is taken up for final hearing today.

3. The short facts of the case are that the petitioner is a charitable trust running Uttar Buniyadi Kanya Vidyalaya at Fulpura, which is, as per the averments of the petitioner, is a tribal area. The petitioner wanted to open 8th standard since the facility of education is available upto 7th standard and, therefore, the petitioner applied to the respondent Board for such purpose. On 12-2-1999, the Board rejected the application of the petitioner and, therefore, the petitioner had to prefer SCA No.7150/1999 before this Court. In the said SCA, ultimately after hearing both the sides, this Court passed the order which reads as under:

> "1. Heard the learned counsel for the respective parties. As a result of hearing and discussion, learned counsel for the petitioner states that the petitioner will make a representation to the respondent authorities for re-examination of the premises in question in the context of the objections taken by the appellate authority as regards the available facilities in respect of availability of water, toilets, air and light, etc. As and when such a representation is made, the concerned authority shall inspect the premises in question and re-examine the question of facilities provided by the petitioner and then pass further orders in accordance with law."

The petition was disposed of accordingly and pursuant to the order passed by this Court, it appears that the District Education Officer once again visited the premises of the petitioner and submitted his report. The copy of the said report is made available to the Court for the purpose of perusal and the said report of the District Education Officer, inter alia, records that that building is sufficient, space is sufficient, and sufficient toilet and water facilities are there, and he also stated in the said report that there is no school within the vicinity of 10 kms. Thereafter, the State Government has considered the matter. It is the case of the petitioner that at the time of hearing, the petitioner was intimated that if the petitioner is not

claiming any grant, the permission to open class of 8th standard can be granted. However, the said request was not accepted by the petitioner, but the contention of the petitioner is that the aforesaid offer to the petitioner for grant of permission, if the petitioner is not going to claim any financial assistance by way of grant, shows that the other requirements are completed and the petitioner is eligible to get the permission for the purpose of opening 8th standard. Ultimately, on 10-6-2001, the order has been passed by the State authority, whereby the permission is declined to the petitioner by confirming the order of the Board on the ground that there are no sufficient arrangements of the classes and the water facility is also not sufficiently made available. The said order is under under challenge in this petition.

4. The learned Counsel, Ms.Vyas on behalf of the petitioner submitted that this Court has given directions to the authority in the order dated 12-3-2001 to have the re-examinations of the premises and the facilities and it was obligatory on the part of the State Government to consider the same. However, the said report is not at all considered. It is also submitted that the petitioner would be entitled to the permission with the grant for opening class of 8th standard as grantable institution pursuant to the resolution dated 30-6-1999. The contention of the petitioner is that since there is no school in the periphery of 10 kms and since the area is situated in the tribal area, permission is required to be granted for opening the class of 8th standard with grant facility. The learned Counsel has also relied upon the unreported judgement of this Court in SCA No.4998/1997 dated 24-4-1998 and has contended that this Court had directed to grant permission to the petitioner therein to start one class of 11th standard (General Scheme) when the Court was satisfied on merits of the matter.

5. On behalf of the respondents, the learned AGP has submitted while supporting the order of the State Government that the State Government has found that there is no sufficient facility of the class area and of water facility and, therefore, the proposal is rejected. It is submitted on behalf of the respondents that the representative of the District Education Officer was heard and after taking into consideration the circumstances, the order has been passed. She has also relied upon the unreported judgement of the Division Bench dated 26-4-2001 in LPA No.394/1993 in SCA No.9825/1992 to contend that even if this Court finds that certain aspects are not properly considered or in

any case there is a case for the purpose of grant of permission, then also the Court cannot straight away grant permission and the proper course would be to remand the matter to the authority concerned.

6. Considering the above and the perusal of the order dated 10-6-2001 passed by the State Government clearly shows that there is no reference regarding the consideration of the report of the District Education Officer. It is true that the report of the District Education Officer may not be binding to the State Government while taking the decision, but at the same time, it was obligatory on the part of the State Government to consider the same, more particularly when this Court had earlier passed the order dated 12-3-2001 in SCA No.7150/1999. An affidavit-in-reply is filed by respondent Board, which of course decided the matter prior to the order dated 12-3-2001 passed by this Court in SCA No.7150/1999. Therefore, the affidavit of the Board is not much relevant for the purpose of this petition, because the State Government had to consider the matter and the State Government was required to take into consideration the report of the District Education Officer dated 16-4-2001. No affidavit-in-reply is filed. However, the learned AGP has only made a statement at the bar that the representative of the District Education Officer was heard. In my view the saying is not sufficient and it was obligatory on the part of the State Government to take into consideration the report of the District Education Officer and even if the report of the District Education Officer was not to be accepted, it was necessary for the State Government to record the valid reasons for such purpose. In the present case, the reference is not even made in the report of the District Education Officer and, therefore, it is submitted that the same is not considered by the State Government while taking the decision.

7. As regards the other contention of the petitioner that an offer was made at the time of hearing that if the petitioner is not claiming any grant, the permission can be granted is concerned, no material is produced on record except the letter dated 26-6-2001 issued by the Trust to the Deputy Secretary, who heard the matter. Since there is no other documentary material produced from the Government record that any such offer was made to the petitioner, it cannot be proceeded on the basis that such offer was made and it was declined by the petitioner. However, there appears to be some substance in the contention of the petitioner that in view of the resolution dated 30-6-1999, the petitioner may be

entitled to have grant if the other requirements are complied with. While observing the same, it is also required to be noted that the policy of the Government is like a guideline in normal circumstances. If there are extraordinary circumstances to make departure, such policy cannot operate or cannot have a statutory force. However, in the present case, even no extraordinary circumstances are recorded by the State Government and rather such was not even called for because the permission is declined. It is only after the permission is granted or the authority comes to the conclusion that the permission is required to be granted, the question of considering the grant would be discussed. I find it proper to leave the matter at this stage so far as the eligibility of the grant is concerned, without expressing any final opinion on the said aspect.

8. In view of the above discussion, the order dated 10-6-2001 passed by the State Government at Annexure "A" to the petition is quashed and set aside and the State Government is once again directed to consider the matter afresh keeping in view the observations made by this Court hereinabove in this judgement and the State Government is further direction to decide the said issue within a period of three months from the date of the receipt of the order by this Court. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.

19-9-2002 (Jayant Patel, J.)

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